

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HARRY SMITH, JR. and
ROSLYN WOODARD SMITH,
Individually and as Administrators of
The ESTATE OF HARRY SMITH, III,

Plaintiffs,

v.

CIVIL ACTION NO. 04-1254-GMS

CITY OF WILMINGTON,

JOHN CIRITELLA, in his individual capacity
and in his official capacity as a police officer of
the Wilmington Police Department,

THOMAS DEMPSEY, in his individual capacity
and in his official capacity as a police officer of
the Wilmington Police Department,

and

MATTHEW KURTEN, in his individual capacity
and in his official capacity as a police officer of
the Wilmington Police Department,

Defendants.

**MOTION TO FILE ATTACHED SECOND AMENDED COMPLAINT
AND
CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1.1**

COME NOW the plaintiffs, by their attorneys, and respectfully move this Honorable Court for permission to file the attached Second Amended Complaint. The bases for this motion are: 1) the complaint should be corrected to be consistent with the Court's decision granting defendants' partial motion to dismiss; and 2) the complaint needs to be amended to conform to the evidence obtained during discovery.

During discovery, the defendant police officers' deposition testimony indicated training and other issues are central to a resolution of this case. Their deposition testimony also varied considerably from other information previously obtained earlier in the discovery process, including responses to formal written discovery requests.

Counsel for plaintiffs, Anne T. Sulton, hereby certifies she consulted with defense counsel, John Parkins, advising him plaintiffs would seek permission to amend the complaint. Defense counsel opposes this motion to amend.

There is no prejudice to defendants if the attached Second Amended Complaint is permitted. The issues arise from the same set of facts and all of the parties are the same. There is no need to change the trial date from the currently scheduled November 6, 2006 date.

For all of these reasons, and based upon the record in this case, plaintiffs respectfully request permission to file the attached Second Amended Complaint so that their complaint conforms with the evidence they have obtained during discovery.

June 5, 2006.

/s/ Anne T. Sulton
Anne T. Sulton
Admitted: Pro Hac Vice

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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2006, I electronically filed with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

Attorney John Parkins E-mail Parkins@rlf.com

/s/ Anne T. Sulton
Anne T. Sulton